

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENDRA HARPER, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

NBI, INC.

Defendant.

**ORAL ARGUMENT
REQUESTED**

Case No. 24-CV-00644

**DEFENDANT NBI, INC.'S MOTION TO DISMISS
AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM**

Defendant NBI, Inc. ("NBI" or "Defendant"), by and through its attorneys, Duane Morris LLP, respectfully requests that the Court dismiss the Amended Complaint of Plaintiff Kendra Harper ("Harper" or "Plaintiff") pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this request, Defendant submits the contemporaneously filed Memorandum of Law and states as follows:

1. Plaintiff does not and cannot allege facts showing the required elements of a claim for alleged violation of the Video Privacy Protection Act ("VPPA"). Plaintiff cannot plausibly allege that NBI is a "video tape service provider" as required by the statute, and Plaintiff cannot plausibly allege that NBI disclosed her personally identifiable information. Plaintiff's Amended Complaint, accordingly, fails for at least three independent reasons, each of which is set forth more fully in Defendant's Memorandum of Law.

2. *First*, Plaintiff cannot allege that NBI is a “video tape service provider” because she cannot plausibly allege that Defendant engaged in “business” as required by the plain language of the statute. Defendant is a non-profit entity and, therefore, does not engage in “business” as the statute uses that term.

3. *Second*, Plaintiff does not plausibly allege that NBI “disclosed” her specific personally identifiable information. Plaintiff does not set forth facts regarding her own purported visit to the website but bases her claim solely on screenshots purporting to exemplify a hypothetical user’s trip to a different page. Accordingly, because Harper’s claim relies solely on speculative hypotheticals, the Court should dismiss the Amended Complaint.

4. *Third*, Plaintiff fails to plausibly claim that continuing legal education courses are the “prerecorded video cassette tapes or similar audio visual materials” that Congress intended to regulate when it passed the VPPA. Accordingly, an entity that provides such courses is not a “video tape service provider” as defined by the statute.

WHEREFORE, Defendant NBI, Inc. respectfully requests that this Court grant its motion to dismiss Plaintiff Kendra Harper’s Amended Complaint for failure to state a claim as well as grant it any other relief the Court deems just and proper.

Dated: November 19, 2024

Respectfully submitted,

NBI, INC.

By: s/ Gerald L. Maatman, Jr.,
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Gerald L. Maatman, Jr., do hereby certify that a true and correct copy of the forgoing document has been furnished by the Court's CM/ECF filing system on this 19th day of November 2024 to the following individuals:

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Dated: November 19, 2024

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